HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION NO.17915 OF 1996

DATE:07.02.2007

Between:

B. Mallareddy & two others

..... PETITIONERS

AND

Government of A.P. rep. By its
Secretary, Secretary to Govt.
Food & Civil Supplies Department,
Secretariat, Hyderabad & 3others.

.....RESPONDENTS

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION NO.17915 OF 1996

ORDER:

The petitioners in this writ petition sought for a writ of Mandamus to declare G.O.Ms.No.466, dated 7.11.1995 in so far as it has absorbed/regularized the services of the petitioners as watchmen instead of attenders is concerned, on the ground that the said G.O. is illegal and unconstitutional being violative of Articles 14, 16 and 21 of Constitution of India. The petitioners also sought for consequential direction to the respondents to regularize their services as attenders with effect from 22.6.1989.

The facts which are not in dispute are that the petitioners were appointed in Annapurna Canteens run by the A.P. State Essential Commodities Corporation Ltd. (third respondent) on 20.12.1981, 26.6.1982 and 1.6.1982 respectively on a consolidated pay of Rs.260/- per month, which was subsequently enhanced to Rs.350/- per month. By G.O.Ms.No.694, dated 1.10.1991 the third respondent Corporation was merged in the A.P. State Civil Supplies Corporation Ltd. (second respondent) with effect from 1.11.1991 and consequently all the employees working under the third respondent Corporation were transferred to the second respondent Corporation. The petitioners were thus continued as canteen workers in the second respondent Corporation on consolidated basis. The Government of A.P. issued G.O.Ms.No.448, dated 16.6.1989 whereby it has regularized the services of 35 persons in the post of Junior Assistants (Assistant Grade-III). However, the petitioners' services were not regularized in the said G.O. Later, the Government issued G.O.Ms.No.466, dated 7.11.1995 wherein the petitioners' services were regularized as watchmen instead of attenders. It is this action of

the Government by which, the petitioners are denied the posts of attenders that is assailed in this writ petition.

On behalf of respondent No.2 a counter affidavit has been filed. It is stated in the counter affidavit that the petitioners, who are working in canteen cannot claim the benefit of G.O.Ms.No.448, since the petitioners constitute a separate class, different from those, who are covered by G.O.Ms.No.448. It is stated that the wage structure between the two categories was different, as the petitioners were being paid consolidated wages under the Minimum Wages Act, whereas, the persons regularized under G.O.Ms.No.448 were being paid daily wages on par with Government daily wage employees. The petitioners were not in the mainstream work of the Corporation and their activities were restricted to the work in the canteen whereas those regularized under G.O.Ms.No.448 were working prior to the regularization in the mainstream work of the Corporation and could be transferred to any place in the State. It is further mentioned that under G.O.Ms.No.212, Finance & Planning (FW.PC.III) Department, dated 22.4.1994, the persons whose services are sought to be regularized should possess qualifications prescribed as per rules in force as on the date of regularization. As per the Employees Recruitment and Service Regulations of A.P. State Civil Supplies Corporation Limited, one should possess a pass in S.S.C. for being considered and appointed as attender. Since none of the petitioners hold the qualification of pass in S.S.C., they could not be appointed as attenders, but instead, they could be appointed as watchmen. On the basis of the aforementioned justification, the second respondent pleaded in the counter affidavit that the action of the Government in appointing the petitioners as watchmen instead of appointing them as attenders cannot be said to be illegal and that no interference is called

for in the writ petition.

I have heard Sri C.V. Bhasker Reddy, learned counsel appearing for the petitioners and Sri V.T.M. Prasad, learned Standing counsel for respondent No.2.

It is not in dispute that the petitioners right through had been working in the canteen run by either the third respondent or the second respondent and their service conditions even as temporary employees were different from those of the persons, who were covered by G.O.Ms.No.448, dated 16.6.1989 whose services were regularized in the said G.O. The learned counsel for the petitioners pleaded that the services of some of the canteen employees were regularized under G.O.Ms.No.448, dated 16.6.1989 and that at that point of time, the respondents have not insisted on the employees possessing the educational qualifications. He also submitted that under G.O.Ms.No.448, a condition was stipulated that if employees were not possessing requisite qualifications, they should acquire them within two years from the date of their regular appointment failing which, they will not be entitled to further promotion.

In para 5 of the affidavit filed in support of the Writ Petition, it is pleaded as under:

> "5. I respectfully submit that the Government, so as to regularize the daily-wage and consolidated employees of IInd and IIIrd respondent Corporation issued G.O.Ms.No.448, dated 16.6.1989 regularising 35 persons in the post of Junior Assistants (Asst.Grade III). There were number of employees who got the benefit of the said G.O. and who are not having qualifications for appointment as Attenders. The same benefit was not continued to us on the ground that we are canteen employees and our case will be dealt with separately. The same is illegal and discriminatory. In fact, earlier to G.O.Ms.No.448, dated 16.6.1989, the Government issued G.O.Ms.No.368, dated 8.10.1982 and Memo No.APSECCL/ESTT/B-1/400/82, dated 22.6.1988 regularising the qualifications on the condition that an employee should be sponsored by the Employment Exchange."

The plea of the petitioners as extracted hereinabove is

vague. No specific plea is raised by the petitioners that among the 35 persons, whose services were regularized in G.O.Ms.No.448, dated 16.6.1989 there were any canteen employees, who were similarly situated with the petitioners. Even G.O.Ms.No.448, dated 16.6.1989 to which, learned counsel for the petitioners invited the attention of the Court does not make any mention of the status of the employees whose services were regularized therein. In the absence of a specific plea and any material produced by the petitioners to the effect that the respondents 1 and 2 have regularized the services of any of the canteen workers, prior to the regularization of the petitioners by not insisting on the required educational qualifications, the plea of the petitioners that the respondents indulged in invidious discrimination violating Article 14 of Constitution of India cannot be accepted.

It is not in dispute that the petitioners' services were regularized after G.O.Ms.No.212, dated 22.4.1994 came into force. The said G.O. undoubtedly applies to the petitioners. Under the said G.O., one of the conditions to be satisfied for regularization/absorption was that a person shall hold the qualifications required for the post against which he is seeking regularization. It is not disputed that to hold the post of attender, one is required to pass S.S.C. examination as per the Employees' Recruitment and Service Regularisations of the second respondent Corporation. Since the petitioners admittedly do not possess this qualification, they were appointed as watchmen. I do not, therefore, see any reason to accept the contention of the learned counsel for the petitioners that the action of the respondents 1 and 2 in appointing them as watchmen instead of appointing them as attenders suffers from any illegality, arbitrariness or discrimination.

For the aforementioned reasons, the Writ Petition fails and is accordingly dismissed, but in the circumstances, without costs.

As a sequel to the dismissal of the writ petition, W.P.M.P.No.22088 of 1996 filed by the petitioners to direct the respondents herein to continue the petitioners as Attenders with regular pay scale and other allowances, is also dismissed.

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C.V.NAGARJUNA REDDY, J.

07th FEBRUARY, 2007.
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